

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE:	)	CASE NO: 22-50929-mmp
	)	CHAPTER 11
	)	
HIGHPOINT LIFEHOPE SPE, LLC,	)	San Antonio, Texas
	)	
	)	Tuesday, April 4, 2023
Debtor.	)	9:03 a.m. to 9:06 a.m.
	)	9:14 a.m. to 10:06 a.m.

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MOTIONS HEARING

BEFORE THE HONORABLE MICHAEL M. PARKER,  
UNITED STATES BANKRUPTCY JUDGE

CALENDARED MOTIONS: SEE PAGE 2

APPEARANCES: SEE PAGES 2, 3

Court Reporter [ECRO]: Recorded; Digital

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CALENDARED MOTIONS:

- 1: MOTION TO ASSUME AND ASSIGN UNEXPIRED GROUND LEASE DATED AS OF APRIL 13, 2018 [DKT.NO.130];
- 2: OMNIBUS MOTION TO ASSUME UNEXPIRED LEASES UNDER WHICH DEBTOR IS LANDLORD [DKT.NO.131];
- 3: MOTION FOR RELIEF FROM STAY TO TERMINATE LEASE BETWEEN DEBTOR AND OFFICE ALLY, INC [DKT.NO.183];
- 4: EXTENDED ORDER AUTHORIZING DEBTOR'S FURTHER LIMITED USE OF CASH COLLATERAL AND REGARDING RELATED MATTERS [DKT.NO.160];
- 5: JOINT MOTION FOR ORDER:
  - (I) AUTHORIZING SALE OF ASSETS;
  - (II) AUTHORIZING SALE PROCEDURES;
  - (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
  - (IV) SCHEDULING HEARING ON SALE MOTION AND APPROVING NOTICE THEREOF; AND
  - (V) GRANTING RELATED RELIEF AND MOTION TO ASSUME EXECUTORY CONTRACT [DKT.NO.187];
- 6: MOTION FOR EXPEDITED CONSIDERATION [DKT.NO.242];
- 7: MOTION TO SUBMIT BID EXHIBIT UNDER SEAL [DKT.NO.255]

APPEARANCES:

For Debtor: NATALIE F. WILSON, ESQ.  
Langley & Banack  
Trinity Plaza II  
Suite 700  
745 East Mulberry  
San Antonio, TX 78212

Also present: SCOTT HONAN

For Woodbranch  
Highpoint: JEFF CARRUTH, ESQ.  
Weycer Kaplan Pulaski & Zuber  
24 Greenway Plaza  
Suite 2050  
Houston, TX 77046

Also present: MIKE MEAGHER

APPEARANCES:

(CONTINUED)

For U.S. Trustee:

ERIN COUGHLIN, ESQ.  
U.S. Trustee's Office  
615 E. Houston St.  
Suite 533  
San Antonio, TX 78205

For San Antonio  
Preventative  
& Diagnostic Medicine:

CAROLINE N. SMALL, ESQ.  
LANDON M. HANKINS, ESQ.  
Davis & Santos  
719 S. Flores Street  
San Antonio, TX 78204

Also present:

DR. ALBERT MOSQUEDA

For Office Ally:

GREGORY M. TAUBE, ESQ.  
Nelson Mullins Riley & Scarborough  
201 17th Street NW  
Suite 1700  
Atlanta, GA 30363

For Capitol One:

JOHN A. HARRIS, ESQ.  
ROBERT P. HARRIS, ESQ.  
Quarles & Brady  
One Renaissance Square  
Two North Central Avenue  
Phoenix, AZ 85004

JAY ONG, ESQ.  
Munsch Hardt Kopf & Harr  
1717 West 6th Street  
Suite 250  
Austin, TX 78703

1           **San Antonio, Texas; Tuesday, April 4, 2023; 9:03 a.m.**

2                           **(Attorney Taube appearing through Webex)**

3   **(Call to Order)**

4                   **THE CLERK:** Case 22-50929; Highpoint Lifehope SPE,  
5 LLC.

6                   **MS. WILSON:** Good morning, Your Honor. Natalie  
7 Wilson on behalf of the Debtor. And joining us on Webex should  
8 be the Debtor's principal, Mr. Scott Honan.

9                           He might not dial in until the 10:00 o'clock hearing  
10 on the Motion to Dismiss.

11                   **THE COURT:** All right. Thank you, Ms. Wilson.

12                   **MR. CARRUTH:** Good morning, Your Honor. Jeff Carruth  
13 on behalf of Woodbranch Highpoint, LLC. Also in the courtroom  
14 is Mike Meagher; M-e-a-g-h-e-r, with Woodcrest.

15                   **THE COURT:** (Indiscern.).

16                   **MS. COUGHLIN:** Good morning, Your Honor. Erin  
17 Coughlin on behalf of the United States Trustee.

18                   **THE COURT:** Good morning, Ms. Coughlin.

19                   **MS. SMALL:** Good morning, Your Honor. Caroline  
20 Small, from Davis & Santos, on behalf of Creditor San Antonio  
21 Preventive & Diagnostic Medicine.

22                           Also on the phone is our client representative, Dr.  
23 Albert Mosqueda, on the Webex. And with me, also from my  
24 office, is Attorney Landon Hankins.

25                   **THE COURT:** I'm sorry. The last one?

1           **MS. SMALL:** With me, also from my office, is Attorney  
2 Landon Hankins.

3           **THE COURT:** Okay. Good morning, Ms. Small.

4           **MR. HARRIS:** Good morning, Your Honor. John Harris  
5 and Bob Harris, along with our co-Counsel, Jay Ong, on behalf  
6 of secured creditor, Capital One.

7           **THE COURT:** Okay. Ms. Wilson, this is (indiscern.).  
8 I was looking at it. And we have them split between 9:00  
9 o'clock and 10:00 o'clock hearing.

10           (indiscern.).

11           **(Working on Audio problems)**

12           **THE COURT:** Let me do this. And I apologize to  
13 Counsel. We're going to take a five-minute recess.

14           You folks can see what's going on with the mic.

15           My apologies. Thank you.

16           **THE CLERK:** All rise.

17           **(Court is in Recess)**

18           **THE COURT:** Sorry about that. We normally check the  
19 mics in the morning. And something happened. Maybe I turned  
20 something off here.

21           But, Ms. Wilson, please.

22           **MS. WILSON:** Good morning again, Your Honor. Do we  
23 need to do appearances again?

24           **THE COURT:** No.

25           **MS. WILSON:** We've done all that? Okay.

1           **THE COURT:** No. You're on the record. It's just I  
2 wasn't getting on the record.

3           **MS. WILSON:** So this morning we have a number of  
4 matters set. Most of them are for status conference or have no  
5 real objection.

6           There were three motions related to leases. The  
7 first was the Debtor's Omnibus Motion to Assume Tenant Leases.  
8 The second was the Debtor's Motion to Assume --

9           **THE COURT:** The ground lease.

10          **MS. WILSON:** -- the Ground Lease.

11          And then one of the objecting tenants had also filed  
12 a Motion for Relief from Stay, which was related to their  
13 objection to the Omnibus Motion.

14          All of this we have filed unopposed motions for  
15 continuance on. And I think that all that we require with  
16 regard to those motions is a continued hearing date. Which I  
17 think rolls into our status conference on the sale hearing.  
18 Because that motion hearing date should follow the sale  
19 procedures.

20          The reason we were asking for the continuance is  
21 because, unfortunately, the Debtor did not receive any  
22 qualified bids in -- under the sale procedures previously  
23 approved by the Court. And so it didn't make sense to go  
24 forward on the Motions to Assume to the extent that they also  
25 require proof of assignment.

1           And the two tenants who have appeared on that matter  
2 -- yeah. We're in agreement that that was the most efficient  
3 and Mr. Taube --

4           **THE COURT:** I'm sorry. Please try and proceed.

5           **MS. WILSON:** Mr. Taube, who had filed the Motion for  
6 Relief from Stay, for Office Ally, was in agreement that his  
7 Motion for Relief from Stay should also follow those sale  
8 hearings. Because it's going to be kind of all the same  
9 evidence; all the same argument.

10           And so, for efficiency's sake, we would ask the Court  
11 once -- hopefully, the amended sale procedures are approved, we  
12 can set a date for that hearing.

13           If we don't set the date today, I'm sure that  
14 Ms. Small, Mr. Taube, and I can come up with a date within  
15 those procedures that makes sense in consultation with the  
16 Court and the Court's availability.

17           So that's where are on what I loosely term "the lease  
18 motions."

19           We have a -- for the continued hearing on cash  
20 collateral, we do have a 120-day cash collateral budget to  
21 present. I don't believe there have been any objections to it.  
22 It is essentially the same as what we have been using for the  
23 last couple of months.

24           Pays the ground lease; pays MCA, as property manager  
25 and as the sale broker; pays utilities; pays the employees who

1 are -- who are at the -- the premises; and things -- you know,  
2 regular maintenance things, like the trash and HVAC maintenance  
3 safety system.

4 So it's essentially the same budget, just carried out  
5 through what we project under the amended sale procedures with  
6 the end of a sale process.

7 And so I don't think there are any serious objection  
8 -- there are any objections there.

9 Our final status conference matter is the sale  
10 procedures. And the Debtor and Capital One have proposed and  
11 provided a redline of the sale procedures. The original order  
12 permits the Court to amend the sale procedures on the motion of  
13 interested parties.

14 And so based on what happened with our previous sale  
15 order and -- we think that the -- there is still interest in  
16 the property. It is not at the \$30 million level, where the  
17 reserve was set.

18 And so what the Debtor in Capital One and MCA would  
19 like to do is to expose the property longer without that  
20 restriction of a minimum bid.

21 And there is a provision for -- we're calling it an  
22 "early-bird sale" in the next 30 days. If not, then the  
23 Debtor, in consultation with Capital One, could engage -- or  
24 MCA, on behalf of the Debtor, could engage a national broker to  
25 try to expose the property even more widely. And that process



1 would carry out for about 90 days -- 90 more days.

2 **THE COURT:** Why not get -- are you sure this is on?  
3 Why not get the broker now?

4 **MS. WILSON:** This may be going into Mr. Aaron's  
5 (phonetic) testimony. But because we believe there are --  
6 there are parties who are interested and could make a  
7 substantial bid. They just could not do it at the \$30 million  
8 reserve.

9 And so if MCA and the Debtor are able to get a  
10 qualified bid somewhere less than \$30 million, but acceptable  
11 to Capital One, we could proceed more quickly with that sale,  
12 rather than engaging a broker, incurring that additional level  
13 of cost and additional delay if it doesn't seem that exposing  
14 it for another 90 days is going to make a material difference  
15 in the sale price.

16 The other substantive difference in the amended sale  
17 procedures is that Capital One is expressly reserving its  
18 rights to credit bid.

19 So that's kind of our -- rather than having a reserve  
20 price, that's the safety net that is built into these amended  
21 procedures -- is that there -- there is -- and at the end of  
22 the 30 days, if -- if Capital One, I think, feels that the  
23 offers and the interest that has come in is really not  
24 sufficient and not something they're interested in, they could  
25 decide at that point to credit bid and --

1 And not then?

2 **MR. SPEAKER:** (Indiscern.).

3 **MS. WILSON:** We were doing these things fairly  
4 quickly over the weekend.

5 So the credit bid protects the floor, rather than  
6 having a reserve price. And those express provisions about the  
7 credit bid were not in the -- in the prior order. So those are  
8 kind of the high-level changes.

9 We believe that, based on the prior order and the  
10 Court's discretion, those amended sale procedures could be  
11 approved today. That's what we would ask for the Court; to  
12 keep this process moving.

13 There are parties who are still talking to MCA, who  
14 are still approaching the Debtor about interest in the  
15 property.

16 And we prefer that there are or -- an order in place  
17 with new deadlines so that we can advise those potential buyers  
18 specifically about what they need to do; what is going to  
19 happen, what the timeline looks like, rather than having to  
20 tell them, "Well, maybe we'll be able to sell it to you, but we  
21 won't know for a few more weeks."

22 We'd like to strike while the iron is hot.

23 **THE COURT:** Okay.

24 **MS. WILSON:** If you have questions for me, I'm happy  
25 to answer them, or I'll yield to whoever wants to talk about

1 the status matters next.

2 **THE COURT:** Mr. Carruth is already standing there  
3 behind you.

4 So, Mr. Carruth, would you rather Mr. Harris speak  
5 first, since he's on the same side of the issue?

6 **MR. CARRUTH:** Sure. Thank you.

7 **THE COURT:** Then you? Okay.

8 **MR. HARRIS:** Thank you, Your Honor.

9 Let me address -- your speaker might not be working.  
10 I think mine's working too good. I hope I'm not blowing the  
11 Court's ears out.

12 **THE COURT:** Oh, no.

13 **MR. HARRIS:** Let me address, first, the different  
14 things that are in front of the Court; maybe at least bring a  
15 little bit of -- of order to what we're asking for  
16 ballistically. And then I'll talk a little bit about these  
17 procedures.

18 But, as Ms. Wilson went through -- what the Court has  
19 in front of it today is a status call on the proceed --  
20 extending the sale procedures; a status call on the Stay-Lift  
21 Motion; and then a status call on the Debtor's two related  
22 Motions for Assumption and Assignment of Leases.

23 Now the Assumption and Assignment of Leases obviously  
24 rides with the sale. Because it's a function of whether or not  
25 a buyer can be obtained through the sale process.

1           And then we have a Motion for Expedited Hearing by  
2 the ground lessor. Not -- we're not hearing its Motion to  
3 Dismiss, but a motion on whether there's such an emergency that  
4 it's got to be heard in some sort of expedited fashion.

5           Going to the sale procedures -- and then I'll -- I'll  
6 come back to those different matters, Your Honor. The sale  
7 procedures have been modified. And the request is to modify  
8 and to really address two -- three big issues.

9           One, there's a big bank collapse in the middle of the  
10 sale process that had a real bad effect on the ability of  
11 buyers -- or potential buyers, in particular, to assemble bid  
12 packages under the time constraints of the original order.

13           So those market conditions really affected and had an  
14 effect on the activity; the market activity regarding the sale.  
15 The extended sale procedures will address that because they  
16 extend out the process.

17           The second thing, as Ms. Wilson said, is there was a  
18 \$30 million bid floor under those existing procedures. Which  
19 at the time we believed was realistic, again, based on at least  
20 what we were hearing in the market, but not realistic in the  
21 market as it sits now.

22           Bidders have indicated that they would be interested  
23 in bidding, but not at the \$30 million level. I don't know  
24 what that's going to be ultimately. Because, obviously,  
25 they're not tipping their hat or hand.

1 But the amended pro -- the revised procedures pull  
2 that floor off. So whatever people are willing to bid, they  
3 can express. It has the protections -- the statutory  
4 protections of a credit bid, but it will give a full  
5 opportunity for this market to bid on this asset at whatever  
6 people are willing bid at.

7 Three, it completely protects the interests of the  
8 non-Debtor contract parties, which is a fair amount of what's  
9 going on right now. And it eliminates one of the things that  
10 they were complaining about in the previous procedures, which  
11 it eliminates the time compression.

12 Under these amended procedures, Your Honor, if there  
13 is a bidder that is going to be presented to this Court for  
14 approval of the same, that bidder and all of its  
15 prequalification package and the materials that it has to  
16 provide to MCA in order to qualify are turned -- are delivered  
17 to the ground lessor, to the tenants, et cetera.

18 And there will not be a hearing on any assignment of  
19 the ground lease or anything else any earlier than 30 days  
20 after that happens, Your Honor.

21 So they are given a full period of time to look at  
22 the data, to look at what is given in the package. And what is  
23 delivered to them is way in excess of what the ground lease  
24 provides. Because that ground lease, in itself, in its own  
25 contract terms, gives the Debtor the absolute right to assign

1 that lease without Woodbranch consent to a permitted  
2 transferee, which is an objectively identifiable thing.

3 And it gives the Debtor the right to assign that  
4 lease to a non-permitted transferee unless Woodbranch has a  
5 reasonable basis to refuse.

6 So one of the things that's been happening here, Your  
7 Honor, is that the non-contract parties to this lease are --  
8 I'm sorry -- the non-Debtor parties to the lease are trying to  
9 inject themselves into the process of the Debtor, trying to  
10 identify potential buyers.

11 That's not their right. That's not their right,  
12 under 365; it's not their contract right; and it's interfering  
13 with the Debtor's ability to fully market this property.

14 Their rights come into play if someone is actually  
15 presented to this Court as a potential assignee of that lease.  
16 And these procedures now fully protect that, and they take all  
17 the time compression out.

18 So that's a significant part of the -- of the way  
19 this would work.

20 So at the end, Your Honor, the procedures are simply  
21 a continuation of the procedures to fully market the property.  
22 I can't tell you that there's going to be an acceptable buyer;  
23 nobody can. And that's not a requirement. And I've never seen  
24 a sale procedure where there had to be a guarantee, at the  
25 beginning, that somebody could get to the end.

1           Secondly, having a lot of fights over this property  
2 is worthless. This property isn't going to generate anything.  
3 It's not helping the Debtor exercise its legal and its  
4 contractual right to try to find bidders without interference  
5 from other parties.

6           Finally, Your Honor, if you put that in context of  
7 these other proceedings, then the procedures can be approved  
8 now. Because they're not affecting anyone's rights at all,  
9 other than the parties; the Debtor and Capital One. Because  
10 it's our collateral. Ground lessor doesn't own that  
11 collateral.

12           Number two, Your Honor, the -- if the procedures are  
13 put in place today, then we can move forward and there can be a  
14 reasonable scheduling and whatever Motions to Dismiss or  
15 anything else that Woodbranch wants.

16           If the Court is not inclined to approve the  
17 procedures today because Woodbranch has filed an objection,  
18 then there certainly could be a hearing in a week or two weeks  
19 -- two weeks.

20           And, Your Honor, if that's the course the Court  
21 takes, then we'd be fine, as long as Woodbranch cooperates with  
22 discovery requests, to have their Motion to Dismiss heard in  
23 two weeks. And you can hear this whole smash and move forward.

24           And, Your Honor, under that type of the schedule, it  
25 would allow one consolidated hearing to hear all of this. It

1 would give the Debtor and Capital One and other parties an  
2 ability to test these Motion to Dismiss arguments in a context  
3 where they're fully paid, the Debtor's cash flowing, and the  
4 property has been improved and maintained by a third-party  
5 property manager.

6 But that's their motion; not mine, Your Honor.

7 And if we go in that direction, then the two motions  
8 of the Debtor to assume or assign leases, which ride with the  
9 sale, can be dealt with at the sale procedure point. And the  
10 other motions will ride with it.

11 So that's simply a suggestion from -- from the  
12 podium, on a way to move forward in a reasonable fashion. And,  
13 Your Honor, if we do that, then I suppose we can have a trial  
14 today on an emergency hearing request. But what we're going to  
15 be trying is whether their Motion to Dismiss is heard sometime  
16 before two weeks from now.

17 I think that's all my comments, Your Honor, unless  
18 the Court obviously has questions.

19 **THE COURT:** No. Thank you, Mr. Harris.

20 **MR. CARRUTH:** Your Honor, the way these two documents  
21 came down is indicative of the entire problem.

22 **THE COURT:** I'm sorry. Which two documents?

23 **MR. CARRUTH:** I'm sorry. The way that the -- the  
24 sale procedures, the proposed order, and the amended sale  
25 procedures, the two documents that were filed yesterday and



1 that he's talking about today -- the way those came down in  
2 indicative of the entire problem of this case -- is that the  
3 entire case now exists for the virtue and benefit only of  
4 Capital One.

5           Because I didn't see these until yesterday. I didn't  
6 -- and I still -- I still don't even have -- as far as I know,  
7 I don't have a Word document version. I got PDF redlines, 6:00  
8 o'clock, last night, after I had already left the office, to  
9 come down here. So this has been brewing for two weeks. I get  
10 it the night before.

11           And the problem is they didn't follow the orders to  
12 begin with. They may say, "Well, there wasn't a bidder." They  
13 didn't do anything that they were supposed to do under the  
14 first sale procedures.

15           That is why we had to interject ourselves. There was  
16 no consultation. There was no information provided. They  
17 didn't send the list out. They didn't do anything they were  
18 supposed to do to cooperate with us to -- and we went through  
19 that at the last -- on February the 23rd.

20           Because we don't take the time -- we don't -- we  
21 shouldn't have to chase people, whether it's a 30-day window or  
22 a 60-day window. If there is going to be an assumption hearing  
23 in this case at -- about adequate assurance of future  
24 performance and whether somebody qualifies under the ground  
25 lease -- which I will assert is still intact.

1           And, you know, the most recent opinion in this case  
2 is Judge Motts. And the basis of that assumption on assignment  
3 opinion, in 2019, was the bid -- the Debtor gets the -- the  
4 lessor gets the benefit of the bargain.

5           And this is a ground lease. This isn't just whether  
6 somebody can -- can pay rent or not. This is whether somebody  
7 can -- can manage the property going forward and maintain the  
8 property. It's a ground lease. It's an entirely different  
9 animal.

10           And that's why the provisions of the ground lease are  
11 important. And that's why they need -- we don't need to be  
12 chasing people.

13           And this process wipes us out entirely. We don't get  
14 any information until they do a data dump. And then that's all  
15 we get. We've been completely written out of this.

16           But I don't know because I got it last night. And so  
17 we can't -- this can be entered today. I mean, it just -- it's  
18 just unreasonable.

19           **THE COURT:** I haven't set the motion that was filed  
20 yesterday for today.

21           **MR. CARRUTH:** Okay.

22           **THE COURT:** But we're here on a status conference.

23           **MR. CARRUTH:** Yes, Your Honor.

24           **THE COURT:** And I can do certain things in the status  
25 conference.

1 But, yeah. That joint motion has not yet been set.

2 **MR. CARRUTH:** Okay. Thank you, Your Honor. Thank  
3 you. But I mention --

4 **THE COURT:** Okay.

5 **MR. CARRUTH:** -- it would be on -- it would be highly  
6 prejudicial to consider this --

7 **THE COURT:** Understood.

8 **MR. CARRUTH:** -- and enter it today, when we haven't  
9 even had a chance to -- to go it line by line and interact with  
10 it.

11 But the problem is, and the reason why this case  
12 should be dismissed as soon as possible is because it's just  
13 for their benefit.

14 They don't follow the orders that were entered. They  
15 didn't give us any information. They didn't give us any  
16 updates. We had to beg and plead for information. MCA is not  
17 doing its job.

18 Capital One is the only party interacting with MCA,  
19 even though all the consultation and provisions were written  
20 into that order. And then they changed the bid. They changed  
21 the bid to suit themselves.

22 That may be the case. And they said, "Well, it only  
23 affects us." Well, that's right. "It only affects you."  
24 That's why we shouldn't be in bankruptcy anymore.

25 And that's why, if they want to say, "Well, it can be

1 a -- it can be a zero bid, it can be a high bid. We can always  
2 credit bid." You can always credit bid the foreclosure.

3 You always credit bid when this thing is out of  
4 bankruptcy. And because when it's out of bankruptcy, the  
5 property, in general, is in less peril because we're not in  
6 default with our lender anymore.

7 And that's the main -- one of the main issues in this  
8 case is that the entire property is in peril. We don't know  
9 when that lender is going to act. Its property is in limbo.

10 The 60, 230-day -- whatever window it is -- because I  
11 don't know how long it is, because I haven't had a chance to  
12 read it. Whatever that window is, is a longer period of time  
13 before the property is stabilized, before there are people out  
14 there trying to lease the property, before there's money being  
15 invested back into the property. And it sits there in this  
16 horrible environment.

17 Yes. There are problems in the banking crisis.  
18 There has been a banking crisis. That's not going to change.

19 Mr. Maher (phonetic) will testify when the time  
20 comes. But that's not going to change. And this property is  
21 not going to be -- nobody's going to be able to finance or put  
22 equity in this property. Very unlikely.

23 The other issue is the -- as far as like what -- he  
24 said there's people out here trying to talk -- trying to talk  
25 down the bid. We've done everything we can not to talk down

1 the bids. That's why we filed a motion to -- the Motion to  
2 Seal.

3 **THE COURT:** The Motion to Seal.

4 **MR. CARRUTH:** And that's why we wanted the Court to  
5 look at that under seal to see what they asked for the first  
6 time, and what actually came in after four months of marketing.

7 And that's why this is an exercise in futility. And  
8 as long -- and like we talked about before, as long as you're  
9 trying to sell something in bankruptcy, you've got an extra  
10 bankruptcy problem added to it. And people don't necessarily  
11 like that.

12 And I think it's indicative that, after this -- you  
13 know, the -- so they had -- they had, I think, between 15 and  
14 20 people on that initial list that we got on the 23<sup>rd</sup>. And we  
15 didn't get an updated list afterwards. All of a sudden, we had  
16 Party A show up with a bid. Party A wasn't on that initial  
17 list. So out of 25 people, nobody sent in information.

18 Then a period -- that entire period of time was  
19 before Silicon Valley Bank. Silicon Valley Bank didn't hit the  
20 media until March the 9<sup>th</sup>. That was seven days before our bid  
21 deadline. Nobody had even submitted information before March  
22 the 9<sup>th</sup>, that we know of.

23 So to say that the banking crisis is going to --  
24 effected the bidding in this case, and it's going to magically  
25 kind of play itself out is wrong in both counts. It didn't

1 affect the bidding to begin with.

2 And the banking crisis or the credit environment for  
3 this kind of property that needs work, that is half vacant, and  
4 with vacancies going down, that's not going to get fixed  
5 either. So that's why we think it's important to, just from a  
6 substantive economic point of view, dismiss the case.

7 But everything before the Court indicates this is  
8 just an exercise for Capital One at this point. Nobody's going  
9 to benefit by it.

10 And whatever -- and instead of all -- all these  
11 lawyers being in here today, all these people of Webex, going  
12 through extra layers of procedure, asking for cash collateral  
13 permission, do this, that, and the other, running up fees,  
14 running up costs, exposing this thing to -- to more bad  
15 publicity, chasing tenants off as the rats leave the ship, this  
16 needs to not be in bankruptcy anymore.

17 Because it's only for their benefit. And it's  
18 hurting the property, and it's keeping us in default with our  
19 lender.

20 **THE COURT:** How are you in default?

21 **MR. CARRUTH:** Because the underlying property is in  
22 bankruptcy.

23 **THE COURT:** Oh. Because --

24 **MR. CARRUTH:** And that is an event to de --

25 **THE COURT:** -- it's in bankruptcy? It just --

1 I don't know that this is working. Are you really --  
2 you're getting me?

3 **THE COURT REPORTER:** It is.

4 **THE COURT:** Okay.

5 **THE COURT REPORTER:** Uh-huh.

6 **THE COURT:** Okay. It's just because it's in  
7 bankruptcy provision that the default is triggered?

8 **MR. CARRUTH:** Yes, Your Honor.

9 **THE COURT:** Well, it's been in bankruptcy now for,  
10 what, nine months?

11 **MR. CARRUTH:** The lender sent a letter to us advising  
12 us of their reservation of rights and that they are -- it has  
13 now escalated with the lender.

14 **THE COURT:** Okay. But you're getting your -- all  
15 your payments under the -- under the lease, right?

16 **MR. CARRUTH:** Well, we are getting rent payments,  
17 yes.

18 **THE COURT:** Okay. So I'm trying to understand what  
19 your risk is.

20 **MR. CARRUTH:** The risk is, is that the lender  
21 proceeds -- our lender proceeds with its remedies whenever it  
22 feels it is not -- it feels that it is unsecure or in jeopardy.

23 And the continuation of the bankruptcy case extends  
24 and increases that risk.

25 **THE COURT:** Even though it's getting paid?

1           **MR. CARRUTH:** Even though the rent's being paid, yes.

2           Because, you know, I've had banks order me before if  
3 something's -- if there's a -- "If there's a covenant default,  
4 yeah, go foreclose. We want to move the credit." We don't  
5 know that that could happen with this lender.

6           **THE COURT:** Okay. And don't the sales procedures  
7 still include a \$100,000 amount for the estate?

8           **MR. CARRUTH:** Yes, Your Honor. And we're willing to  
9 make --

10          **THE COURT:** So there is some benefit --

11          **MR. CARRUTH:** Yes, Your Honor.

12          **THE COURT:** -- to the estate.

13          **MR. CARRUTH:** And Woodbranch is willing to match that  
14 in order to get it out of bankruptcy. We're willing to put  
15 that in the bucket to get it out.

16          **THE COURT:** Okay.

17          **MR. CARRUTH:** Absolutely. We'll do that tomorrow.

18          **THE COURT:** Okay. Okay. Thank you, Mr. Carruth.

19          **MR. CARRUTH:** Thank you.

20          **MS. SMALL:** Good morning, Your Honor. Caroline Small  
21 on behalf of San Antonio Preventive & Diagnostic Medicine,  
22 which I'll refer to as "the clinic" or "the doctors" or  
23 "SAPDM," which is what we have in our -- in our papers.

24               If you're wondering why we're here today, there is --  
25 there's a lot of things that aren't of any particular moment to



1 my client. So we don't really have a dog in the fight over the  
2 cash collateral, the sales procedures.

3 Frankly, we're not interested in -- in getting  
4 involved in the bankruptcy any more than we have to. And,  
5 frankly, couldn't care whether it gets sold, not sold,  
6 assigned; what have you.

7 Our concern -- I guess I'm one of the rats leaving  
8 the ship. The pre-petition -- we informed the Debtor that we  
9 would be moving out due to the deteriorating condition of the  
10 building. And our concern is simply that we want to follow  
11 through with that as soon as possible.

12 And so our interest really is only in the motion for  
13 -- the original Motion for the Assumption of the Lease. We  
14 were objecting to that. We have objected to that for all the  
15 reasons listed in our pleadings.

16 And then we were opposed to just moving out that  
17 hearing. But we ultimately agreed to the status conference  
18 today.

19 Because, from my client's perspective, while I enjoy  
20 sitting here in your courtroom, Your Honor, and listening to  
21 the -- the good arguments of Counsel, my client doesn't really  
22 enjoy paying me to do that and would like at least our issue  
23 with respect to assumption of our lease teed up as soon as  
24 possible.

25 And it seems, by tying it to these other motions in

1 terms of the sales procedures and whether it eventually gets  
2 assigned, it's just -- it's inefficient for my client.

3 And so we're trying to just ensure that we can tee up  
4 the assumption -- not necessarily as to every tenant, but as to  
5 our tenant, as soon as possible so we can follow through with  
6 what we started, pre-petition, and seek to terminate, under  
7 State law for the same reason we joined in the relief to  
8 dismiss the case.

9 Because then that obviously gives us rights to  
10 proceed under State law.

11 **THE COURT:** Yeah. But the --

12 **MS. SMALL:** So that's why we're here today.

13 **THE COURT:** I'm sorry. So the -- until the Debtor  
14 has a buyer, there's nothing to be assumed, right?

15 In other words, right now the Debtor doesn't have a  
16 buyer. If I allow them more time to find a buyer, that's the  
17 first time that they'll have a reason to assume, right?

18 If the Debtor doesn't have a buyer, it would have to  
19 be either a credit bid from Capital One, in which case you'd be  
20 talking to Capital One about assuming.

21 **MS. SMALL:** Well, it seems to me that, unless they  
22 have a buyer, they don't have someone to assign it to. But  
23 they still have to decide whether they're going to assume it.

24 **THE COURT:** I'm sorry. That's correct. That's  
25 correct. I'm conflating the two, right? They don't have

1 anyone to assign it to.

2 But they're not going to assume it if they -- they  
3 won't necessarily assume it unless they have a buyer in place.  
4 In other words, a Debtor never assumes a contract unless  
5 they're reorganizing or have someone on the hook to -- to  
6 purchase the assets.

7 **MS. SMALL:** That may be their position. Our position  
8 is let's tee this up and get it -- and get it moving forward as  
9 soon as possible.

10 **THE COURT:** Okay.

11 **MS. SMALL:** In other words, from our tenant's  
12 perspective -- or my client's perspective, it doesn't matter to  
13 us whether the lease gets assigned down the line or not. We  
14 have grounds today to terminate the lease that we want to  
15 pursue.

16 And short of lifting the stay -- which I understand  
17 the position is, that's not the way it's done; it's done  
18 through this way. We're happy to do that. But we're just  
19 interested in making sure that happens sort of sooner than  
20 later.

21 And so to the extent that they need more time for  
22 this sale and find more bidders, frankly, we could care less.  
23 But the impact on us, in kind of kicking that can down the  
24 road, does hurt my client because we're in a building where it  
25 is, frankly, not safe to practice medicine. And they need to

1 get out.

2 And so that's our concern we're trying to balance,  
3 Your Honor.

4 **THE COURT:** Okay. All right. Thank you.  
5 Anyone else?

6 **MR. SPEAKER:** Your Honor, just one --

7 **MS. SMALL:** Just a second. Mr. Taube --

8 **THE COURT:** Oh.

9 **MS. SMALL:** -- is on the Webex.

10 **THE COURT:** Okay.

11 **MR. SPEAKER:** Oh, sorry.

12 **MR. TAUBE:** Good morning, Your Honor.

13 **THE COURT:** Good morning.

14 **MR. TAUBE:** This is Greg Taube on behalf of Office  
15 Ally --

16 **THE COURT:** Yes, sir.

17 **MR. TAUBE:** -- tenant in the building.

18 I would echo Ms. Small's remarks regarding -- her  
19 argument regarding her client's position as a tenant.

20 In addition, Your Honor, I would add that Ms. Small's  
21 client and my client are being held hostage by the automatic  
22 stay in this bankruptcy case.

23 And I filed a Motion for Relief from Stay for my  
24 client and also joined in the Motion to Dismiss on the same  
25 grounds as -- for the Motion for Relief from Stay in that my

1 client is prevented by the automatic stay from terminating the  
2 lease.

3 And without any grounds for continuing the bankruptcy  
4 case, the stay should be terminated as to my client, which is  
5 all that I'm asking for, for my client.

6 But if it takes dismissing the case for my client to  
7 be able to terminate the lease, then I'm for dismissing the  
8 case for my client.

9 That's all, Your Honor.

10 **THE COURT:** Okay. Thank you.

11 Anyone else on the phone?

12 Okay. Follow up?

13 **MR. HARRIS:** Your Honor, let me make these  
14 observations. As you've seen from the argument, from all of  
15 the Counsel, there -- there are a lot of issues here.

16 And I won't bore the Court with more -- with more  
17 argument at a status conference other than I do want it to be  
18 very clear that MCA, Capital One, and the Debtor complied with  
19 every single piece of the sale procedures. And any suggesting  
20 that they didn't is just wrong.

21 But that's not today's fight. And as I said, at the  
22 beginning, Your Honor, we're -- it's a status call on the sale  
23 procedures. We're -- if the Court wants to have a hearing, and  
24 Mr. Carruth's client can raise whatever objections they think  
25 they have after he reads them, we can have that hearing in two

1 weeks.

2           Mr. Carruth's client wants a hearing on a Motion to  
3 Dismiss the whole case. We can have that hearing in two weeks.  
4 And the Debtor, Capital One, and other parties have some  
5 ability to conduct some discovery over this alleged default and  
6 these other issues.

7           Because the reality is, Your Honor, nobody in the  
8 courtroom can dispute this Debtor has paid that ground lease  
9 current. All the taxes are current. It is performing its  
10 obligations. The Debtor has improved, dramatically, the  
11 property.

12           And so what you have are three non-Debtor parties to  
13 contracts trying to tell the Court what to do with an entire  
14 bankruptcy case, whose interests are being protected.

15           But, Your Honor, if they think they're not, then that  
16 can be the subject of that hearing when everybody has a fair  
17 opportunity to present a full case.

18           So if we move things to two weeks, you don't have to  
19 have a hearing today, on the fly, over whether there's an  
20 emergency need because they'll have their -- over the Motion to  
21 Dismiss, because they'll have their hearing in two weeks and  
22 we'll have an opportunity to take some examination of  
23 Woodbranch on some of the allegations that they've made.

24           The Court will have -- all parties will have time to  
25 look at those procedures. And if they think there's something

1 inappropriate with them that effects their legitimate rights,  
2 they can bring it to the Court.

3 And the Court can then decide whether it's moving  
4 forward with the sale process and under what conditions or  
5 whether the Court decides that they've presented such a  
6 compelling case that something else needs to be done. But  
7 that's the orderly way to do it.

8 And at that same hearing, Your Honor -- neither one  
9 of these two tenants that just spoke to the Court have filed a  
10 Motion to Compel rejection. That's their remedy if they think  
11 they are being harmed.

12 The Debtor is maintaining the property. The Debtor  
13 is in compliance, it believes, with the leases, post-petition.  
14 The Debtor has a statutory right to cure defaults.

15 So if they think there's something -- and as the  
16 Court observed, the Debtor certainly has the right to try to  
17 effect a sale of its assets to a buyer that would lead to an  
18 assignment, if they can meet 365 in the contract terms.

19 So if those parties think that there is something so  
20 dramatic that's occurring that it compels immediate relief that  
21 they haven't even asked for yet, then hear that in two weeks.

22 And we can get through this back and forth, and  
23 either move forward with the sale process that everybody  
24 understands and that protects everyone's rights, which we  
25 believe this one does, or these parties will mount some sort of

1 case that we'll all be real interested to see, that this whole  
2 case has to terminate today because of the interest of three  
3 non-Debtor contract parties whose post-petition obligations are  
4 fully current.

5 That would be our suggestion, Your Honor. It's the  
6 efficient way to go. It gets rid of a lot of piecemeal  
7 hearings over issues that -- that, frankly, aren't important;  
8 in particular, the extradited hearing. Because we can have  
9 that hearing in two weeks.

10 **THE COURT:** Okay. Mr. Carruth?

11 **MR. CARRUTH:** Your Honor, I guess, to dovetail onto  
12 that -- it was something we didn't get to first time I was up  
13 here. That's putting the Party A bid in front of you and  
14 getting ruling on the Motion to Seal.

15 And I have a copy of that bid in which I think will -  
16 - I think will help the Court with -- with some of -- maybe  
17 some of the decision making or some of the perception of this  
18 case today.

19 **THE COURT:** Well, let me ask you, first, about the  
20 expedited, right? The Motion for Expedited Hearing on the  
21 Motion to Dismiss.

22 And Mr. Harris now has offered twice the two-week  
23 prescription for when the hearing could be held. Can I get  
24 your kind of advice?

25 Where does your client stand on how quickly you want



1 to try and have that?

2 **MR. CARRUTH:** May I do one quick --

3 **THE COURT:** Yeah.

4 **MR. CARRUTH:** -- final consultation?

5 **THE COURT:** Yeah. Sure.

6 **MR. CARRUTH:** Thank you.

7 **THE COURT:** Sure.

8 **(Attorney Carruth consults with Client)**

9 **MR. CARRUTH:** Your Honor, I think the two-week would  
10 be acceptable. And I think, in the meantime, we will also tee  
11 up a Motion to Compel Rejection of the Ground Lease to be heard  
12 with all of that.

13 And I can get that on file -- today's Tuesday -- by  
14 Thursday. But it'll be same -- same stuff, some same issues.  
15 I'm sure it all overlaps. So, you know, the two-week item  
16 would be acceptable.

17 And just as a housekeeping matter, my April 5 matters  
18 in Cooper Lax (phonetic) were going to get pushed anyway next  
19 week. So that opens up time for all of us. Because we settled  
20 with the bank. And we're going to re -- re-notice.

21 But, yes. I think that -- under the circumstances,  
22 that would be workable. And if the Court's not inclined to  
23 dismiss today, then that would be the -- the obvious  
24 alternative would be a hearing in a couple of weeks.

25 **THE COURT:** Okay. Yeah. My problem is, as you saw,

1 both the objectors have suggested they need some discovery  
2 before we have the Motion to Dismiss. And so I'm really  
3 hesitant to set it on a day or two notice for that reason.

4 But that doesn't mean we can't certainly consider it  
5 on an expedited basis. And so if you're in agreement at two  
6 weeks, I think it makes some sense to go ahead and try and set  
7 it two weeks from now.

8 **MR. CARRUTH:** And we would, likewise, need a little  
9 bit of discovery also.

10 **THE COURT:** Okay. Let me see. I'm going to be in  
11 Waco in two weeks. What about either the 26<sup>th</sup> or the 25<sup>th</sup>? The  
12 26<sup>th</sup> would probably be my preferred date.

13 **MS. WILSON:** Your Honor, either the 25<sup>th</sup> or 26<sup>th</sup> works  
14 for the Debtor.

15 **THE COURT:** Okay.

16 **MR. SPEAKER:** I have a JP Court non-jury trial on the  
17 26<sup>th</sup>. And the associate who just was covering that just left.  
18 But I'll find another associate to cover that.

19 **THE COURT:** Are you sure?

20 **MR. SPEAKER:** Yes, Your Honor. Yeah. We can --  
21 yeah. I'll make the 26<sup>th</sup> work, Your Honor.

22 **THE COURT:** Make the 26<sup>th</sup> work?

23 Mr. Harris?

24 **MR. HARRIS:** Twenty-sixth will work, Your Honor.

25 **THE COURT:** Okay. Ms. Small?

1           **MS. SMALL:** Twenty-sixth works, Your Honor.

2           Would that also be the date that any Motions to  
3 Compel Rejection would be heard?

4           **THE COURT:** So you got to file a motion to expedite  
5 with it. But, yeah. I can probably -- if you get them on file  
6 soon enough, we'll go ahead and we'll -- we'll set those  
7 probably the same time. Okay?

8           **MR. HARRIS:** Can I just make one comment --

9           **THE COURT:** Yeah.

10          **MR. HARRIS:** -- (indiscern.), Your Honor?

11          **THE COURT:** Yeah.

12          **MR. HARRIS:** We haven't seen any Motion to Compel  
13 Rejection. And I think we would have a real objection to that  
14 until we see it, on that being set on an expedited basis.

15               But it hasn't been filed yet. So --

16          **THE COURT:** It hasn't been filed. I'll look for the  
17 Motion to Expedite; I'll look for your objections. And we'll  
18 sort it out from there.

19          **MR. HARRIS:** We'll reserve our rights, Your Honor,  
20 when we see whatever --

21          **THE COURT:** Okay.

22          **MR. HARRIS:** -- the request is.

23          **THE COURT:** Okay. And, Mr. Taube?

24          **MR. TAUBE:** Yes, Your Honor. That schedule makes  
25 sense from Office Ally's perspective.

1           **THE COURT:** Okay.

2           **MR. TAUBE:** This hearing on 25<sup>th</sup> or 26<sup>th</sup>.

3           **THE COURT:** Okay. Well, it'll be on the 26<sup>th</sup>. So  
4 we'll set the Motion to Dismiss that's on file for April 26<sup>th</sup>,  
5 at 9:30 a.m.

6           We'll also go ahead and carry over the joint motion  
7 on the sales procedures that was filed yesterday to that time  
8 period. Okay? And that will then carry the Motions to Assume  
9 -- let me make sure I get those docket numbers. I'm sorry. We  
10 got a lot of stuff going on here.

11           So your Omnibus Motion to Assume, Ms. Wilson. And  
12 then your Motion to Assume to Ground Lease. We'll carry those  
13 over to that date as well.

14           **MS. WILSON:** Very good, Your Honor.

15           **THE COURT:** Okay? So that resolves the Motion for  
16 Expedited Hearing.

17           And, Mr. Carruth, my suggestion would be, we carry  
18 over your Motion to Admit that on a confidential basis to that  
19 date as well.

20           And I would suggest that the Court prefers to take  
21 things in-camera as opposed to sealing them. And so it's your  
22 motion. You get to direct how you want it. But I'll tell you  
23 that, if I'm going to find something is truly confidential  
24 information, my preference is generally just to take it for  
25 review in-camera.

1           **MR. CARRUTH:** Can we give you this in-camera now,  
2 then, while we're here?

3           **THE COURT:** No. Let's wait until we -- I need to  
4 make sure it's confidential information first before I kind of  
5 agree to that.

6           **MR. CARRUTH:** Well, if -- I'm not asking for an  
7 advisory opinion. But as long as we're all talking, if the --  
8 when it comes time for all of these bids to be discussed,  
9 whether --

10          **THE COURT:** Yeah.

11          **MR. CARRUTH:** We're going to have to have some --  
12 some process or procedure for them to see daylight, whether  
13 it's the qualification stage or whatever -- whatever's in these  
14 new procedures.

15               So we're going to have to have something where we can  
16 talk about these openly. Because, you know, this -- their  
17 words in their motion was a very low bid. And I can't  
18 emphasize enough how -- how that was correct without, you know,  
19 breaching the existing confidentiality I have.

20          **THE COURT:** I get that. I do. I do. But we're not  
21 going to have any new bids, I don't think, before the 26<sup>th</sup>.  
22 And I guess if we do have new bids before the 26<sup>th</sup>, then I  
23 would want them to be shared appropriately, subject to  
24 confidentiality.

25               So you should be able to see them. But my

1 understanding of your Motion to Seal, it was related to your  
2 Motion to Dismiss. You wanted to show me how low the value  
3 was. And then we'll talk about the -- I think your term was  
4 the "uselessness" or the --

5 **MR. CARRUTH:** Futility?

6 **THE COURT:** I'm sorry?

7 **MR. CARRUTH:** Futility?

8 **THE COURT:** -- futility. That's the word I was  
9 looking for -- the futility of proceeding forward.

10 And so I want to reserve that for that hearing. And  
11 we'll take that up first before that -- you know, before we  
12 actually have witnesses on that. Okay?

13 **MR. CARRUTH:** Thank you.

14 **THE COURT:** Now, I realize we're a little bit before  
15 the 10:00 o'clock. And some of these things weren't set for  
16 10:00 o'clock. But I think I have all the parties in here that  
17 are interested.

18 Go ahead, Mr. Harris.

19 **MR. HARRIS:** Just two comments, Your Honor, before we  
20 wrap.

21 Number one -- and I know Mr. Carruth will do this.  
22 But with two weeks, there is discovery that we will need to  
23 take. And so we would try to do that informally. And our  
24 expectation would be there would be cooperation with reasonable  
25 informal discovery.

1 And the second is, we do have the cash collateral --

2 **THE COURT:** Oh, yeah.

3 **MR. HARRIS:** -- matter that we just need an order in  
4 place so operations can continue.

5 **THE COURT:** Yeah. I didn't hear any objections from  
6 any of the parties on continuing cash collateral. I mean, it  
7 doesn't matter if I continue cash collateral, and I dismiss the  
8 case in two or three weeks, right? It becomes moot in terms of  
9 where we'll go.

10 Do you have a problem with --

11 **MR. HARRIS:** I just didn't want anything at this  
12 point to prejudice our dismissal arguments. But --

13 **THE COURT:** Yeah. No. I don't view it as  
14 prejudicing your dismissal arguments at all. It's just a  
15 matter of we want the Debtor to be able to continue to pay your  
16 client and pay everybody else.

17 **MR. HARRIS:** Yes. So no objection to the -- the  
18 order circulated -- if you want to do this. Let me -- it came  
19 in yesterday. If I can have 30 minutes after the Court to  
20 browse through the order. But we're not going to object to the  
21 continued use of cash collateral.

22 **THE COURT:** Okay. Okay. Thank you, Mr. Carruth.

23 **MR. HARRIS:** And, Your Honor, this is just following  
24 up on that. So the Debtor's authorization to use cash  
25 collateral terminates today. That was said in the existing

1 second extended order.

2 And so we have proposed an order in -- the same time,  
3 we weren't -- we're now up to the third extended order. We're  
4 using the same form. We proposed a budget. It's 120-day  
5 budget. It goes out. Obviously, as you said, if you dismiss  
6 the case in the meantime, well, it won't.

7 But it does allow us to go forward. And it provides  
8 that -- you know, the cash flow from the property is -- it is  
9 sufficient to pay the ground lease, going forward; to pay all  
10 the operating expenses, which was a big problem earlier in the  
11 case before, you know, the third-party property manager got  
12 involved.

13 There is a provision, Judge -- and it's the same  
14 provision that's been in all of these orders -- that allows MCA  
15 to continue like the marketing process their doing, which is  
16 maintaining a data room and fielding questions from interested  
17 parties and the like.

18 We won't be submitting bids during this period. But  
19 that -- you know, we aren't going to shut down the existing  
20 sale process. And people want access to a data room or -- or  
21 the like or want to tour the property; that type of thing, you  
22 know, this order would open -- would provide the data process  
23 would continue.

24 Which doesn't affect anything that's going to be  
25 heard by the Court in two weeks, other than, you know, we don't



1 turn people away because there is not some continuing  
2 authorization.

3 **THE COURT:** But you think you already have some  
4 potential bidders lined up, just at a lower valuation than  
5 Capital One would like?

6 **MR. HARRIS:** That was the (indiscern.) that people  
7 were saying, "Well, we can't bid at that value." And when you  
8 say, "There was one really low bid," they submitted a non-  
9 conforming bid, because there was a \$30 million floor; other  
10 bidders did not.

11 And so that's -- the point of this would be to expose  
12 it to that. And there are interested party -- Judge, one other  
13 just technical thing that you mentioned, which was, you know,  
14 we have this kind of 30-day period to see if the -- if existing  
15 parties would submit an acceptable bid.

16 You mentioned, "Well, why don't we get a broker  
17 involved sooner than later?"

18 I think there would be the -- the expect -- or the  
19 proposal is that a broker would be retained. That would be  
20 subject to Court approval. I think we could get that approval  
21 process going so that, you know, come that 30-day period, it --  
22 they need to be ready to go.

23 And so it would somewhat parallel. But it -- but  
24 we'll have to address the broker retention during that period  
25 as well.

1           **THE COURT:** Frankly, by the 26<sup>th</sup>, you might want to  
2 have the broker in place.

3           **MR. HARRIS:** And we can certainly work on that or at  
4 least have a proposal.

5           **THE COURT:** Okay.

6           **MR. HARRIS:** So, Judge, we had submitted the order  
7 through chambers. We provided a notice to everyone who has  
8 been active in the case.

9           U.S. Trustee is approved. The Debtor, obviously, is  
10 in agreement with it. Mr. Carruth approved his position. I  
11 did, for your purposes, did submit a redline that shows the --  
12 you know, the very --

13           **THE COURT:** I've reviewed it.

14           **MR. HARRIS:** -- few changes.

15           **THE COURT:** I've reviewed it. The order looks okay  
16 to me. But I want to make sure Mr. Carruth is on board as  
17 well.

18           So give him some time to review it before you either  
19 resubmit or just let the Court know that the order, as stands  
20 is --

21           **MR. HARRIS:** Assuming we would upload it as an order  
22 and go forward from there.

23           **THE COURT:** Yes, please.

24           **MR. HARRIS:** All right. Thank you, Your Honor.

25           **THE COURT:** All right. Let's talk real quick about

1 discovery, since you raised it.

2 I expect reciprocal rights, obviously, with respect  
3 to the discovery. And I expect cooperation. I don't expect  
4 long deposition days or things like that, right?

5 And so if there is any pushback or things like that,  
6 feel free to contact us, and we'll -- we'll either jump on the  
7 phone or jump on a Webex hearing or something to -- to try and  
8 deal with that.

9 But, yeah. I expect both parties to cooperate in  
10 that process.

11 **MR. HARRIS:** Understood, Your Honor.

12 **THE COURT:** Okay?

13 All right. What have I missed?

14 Ms. Castleberry, what have I missed?

15 **THE CLERK:** The only thing I can recall, Judge, is  
16 the multifarious pleadings.

17 **THE COURT:** Oh, yeah. So, Mr. Carruth, generally the  
18 -- we don't allow, quote, multifarious pleadings.

19 Your Motion to Dismiss is primarily a Motion to  
20 Dismiss. And then the alternative is the -- a motion as to MCA  
21 -- right? -- for the removal of -- or the vacation of the order  
22 as to MCA.

23 Generally, those have to be done as separate motions  
24 because that's the way the Clerk's Office keeps track of it.  
25 Right? They have trouble keeping track of both things.

1 Because I might do one thing with respect to one motion, and  
2 something different with respect to the others.

3 And so for now we'll go ahead and we'll carry it to  
4 the -- the 26<sup>th</sup>. But please don't let that happen again.

5 **MR. CARRUTH:** Understood, Your Honor. Fewer Roman  
6 numerals in the -- in the titles.

7 **THE COURT:** Yeah.

8 **MR. CARRUTH:** Understood.

9 **THE COURT:** Okay. Okay. And then I think the -- did  
10 we talk about Office Ally's Motion to Lift Stay? Is that going  
11 to also be reset to the 26<sup>th</sup> then?

12 **MS. WILSON:** I think so, Your Honor. We've carried  
13 that with the Omnibus --

14 **THE COURT:** Okay.

15 **MS. WILSON:** -- Motion to Assume because they're  
16 related.

17 **THE COURT:** Okay. All right. I just wanted to make  
18 sure that was on the record. Because I don't think I said it  
19 specifically.

20 Okay. Now I think that's it. I think that's it.  
21 All right? I know I've got -- and we're at 10:00 o'clock. So  
22 I've got some other matters set, and there's a lot of you in  
23 here.

24 So we'll take a few minutes for you guys to gather.  
25 But I have some other folks coming up. So I'm not getting up.

1 I'm going to wait -- we're going to call the next matter.

2 Thank you all for being here this morning.

3 **(Proceeding adjourned)**

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CERTIFICATION

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.



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Signed

April 7, 2023

Dated

*TONI HUDSON, TRANSCRIBER*